IN THE

Supreme Court of the United States

OCTOBER TERM 1971

Supreme Court, U. S.
FILED
APR 15 1972
MICHAEL RODAK, JR., CLERK

No. 71-784

DOROTHY TAYLOR, CHARLES ELLOIE, ISAAC REYNOLDS and CELESTINE FRANKLIN, on behalf of themselves and other similarly situated.

Plaintiffs-Petitioners,

versus

JOHN J. McKEITHEN, Governor of the State of Louisiana, C.C. "TADDY" AYCOCK, Lieutenant Governor of the State of Louisiana, JOHN S. GARRETT, Speaker of the House of Representatives, JACK P.F. GREMILLION, Attorney General of the State of Louisiana, DOUGLAS FOWLER, State Custodian of Voting Machines for Louisiana, and THE ORLEANS DEMOCRATIC EXECUTIVE COMMITTEE.

Defendants-Respondents.

VICTOR BUSSIE, JOHN C. BRIGHT, A.P. "PAT" STODDARD, T. K. STIZLEIN and LOUIS BERRY CARROLL, G. MILLER, WALTER M. RUTZ, PERRIN RITTINER, BENJAMIN FORBES, SR., MRS LILLIE BRIDGES, EMMITT J. DOUGLAS, DR. D'ORSAY BRYANT, ARTHUR J. CHAPITAL, A.C. DUBRIEL, ROOSEVELT HILL, REV. HERMAN FARR and FLORENCE FLOYD.

Plaintiffs-Respondents.

RESPONSE IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

IGNATZ G. KIEFER
225 Baronne Street
New Orleans, Louisiana 70112

MICHAEL H. O'KEEFE
813 American Bank Bldg.
New Orleans, Louisiana 70112

JACK P. F. GREMILLION
Attorney General,
State of Louisiana
State Capitol
Baton Rouge, Louisiana

ADRIAN G. DUPLANTIER
2714 Canal Street
New Orleans, Louisiana 70119

ATTORNEYS FOR DEFENDANTS-RESPONDENTS

I N D E X

	PAGE
Citations	i
Title Page	1
Questions Presented	2
Statement of the Case	2
Reasons for Denying Writ	3
Conclusion	11
Certificate of Service	12
Appendix:	
Brief on behalf of Appellants with respect to Senate Plan New Orleans Area. United States Court of Appeals, Fifth Circuit, No. 71-2968	13

CITATIONS - Page 1

Cases: **PAGE**

Abate v. Mundt, 403 U.S. 182 (1971) --- 6

Bannister v. Davis, 263 F. Supp 202 (D. C. La. 1966) ---------- 4

Bynum and Burns, 379 F. 2d 229 (8th Cir. 1967) ---------- 9

Connor v. Johnson, 300 F. Supp. 506 (S.D. Miss. 1971) ---------- 7

Fair v. Adams, 233 F. Supp 310 (N.D. Ala. 1964) ---------- 10

Fair v. Dekle, 376 F. 2d 377 (5th Cir. 1966) ---------- 9

Golden vs. Zwickler 394 U. S. 103 (1969) ---------- 9

Gomillion v. Lightfoot 364 U. S. 339 (1960) ---------- 6

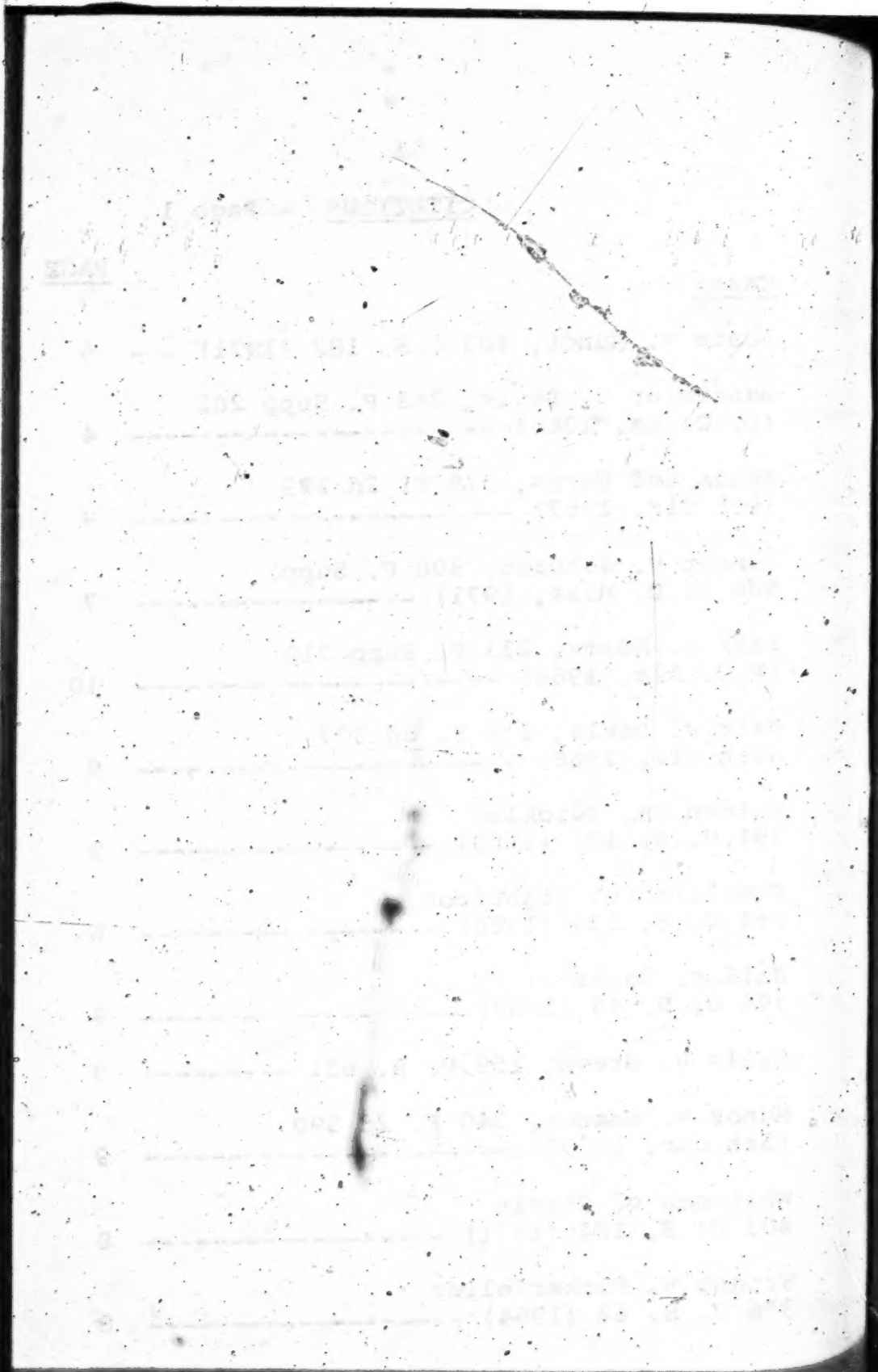
Hall v. Beals 396 U. S. 45 (1969) ---------- 9

Mills v. Green, 159 U. S. 651 --------- 9

Munoz v. Amador, 340 F. 2d 590 (5th Cir. 1965) ---------- 9

Whitcomb v. Chavis 403 U. S. 124 (1971) ---------- 8

Wright v. Rockerfeller 376 U. S. 62 (1964) ---------- 8



CITATIONS - Page 2

PAGE

Statutes:

Louisiana Act of 1971, No. 106 -------- 2

Louisiana Act of 1971, No. 108 -------- 2

Federal Rules of Civil Procedure
53 (e)(2) ---------- 3

DOROTHY TAYLOR, CHARLES ELOIE, ISAAC REYNOLDS and CELESTINE FRANKLIN, on behalf of themselves and other similarly situated.

Plaintiffs-Petitioners,

versus

JOHN J. McKEITHEN, Governor of the State of Louisiana, C.C. "TADDY" AYCOCK, Lieutenant Governor of the State of Louisiana, JOHN S. GARRETT, Speaker of the House of Representatives, JACK P.F. GREMILLION, Attorney General of the State of Louisiana, DOUGLAS FOWLER, State Custodian of Voting Machines for Orleans, and THE ORLEANS DEMOCRATIC EXECUTIVE COMMITTEE.

Defendants-Respondents.

VICTOR BUSSIE, JOHN C. BRIGHT, A.P. "PAT" STODDARD, T. K. STIBLEIN and LOUIS BERRY CARTER, G. MILLER, WALTER M. HUTZ, PERRIN KITTINER, BENJAMIN [illegible] JR., MRS LILLIE BRIDGES, EMMITT J. DOUGLAS, DR. D'ORSAY [illegible], ARTHUR J. CHAPITAL, A.C. DUBRIEL, ROOSEVELT HILL, REV. HERMAN [illegible] and FLORENCE FLOYD.

Plaintiffs-Respondents.

RESPONSE IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

IGNATZ G. KIEFER
225 Baronne Street
New Orleans, Louisiana [illegible]12

MICHAEL H. O'KEEFE
813 American Bank Bldg.
New Orleans, Louisiana 70112

JACK P. F. GREMILLION
Attorney General,
State of Louisiana
State Capitol
Baton Rouge, Louisiana

ADRIAN G. DUPLANTIER
2714 Canal Street
New Orleans, Louisiana 70119

ATTORNEYS FOR DEFENDANTS-RESPONDENTS

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

QUESTIONS PRESENTED

1. Whether the Court of Appeals erred in modifying Senate Districts 2, 3, 4 and 5 of the special master's plan as adopted by the District Court in order to correct apparent constitutional deficiencies therein and remove racially gerrymandered districts.

2. Whether the decision of the Court of Appeals is still a controversy subject to review on writ of certiorari or is moot, since the elections have already been held in the districts as constituted by the Court of Appeals.

3. Whether this case presents any issues of special interest which justify a writ of certiorari to review the unanimous decision of the Court of Appeals, which decision adopted the special master's reapportionment plan as adopted by the District Court with the sole exception that seven Senate Districts were altered in the Court of Appeal decision, out of a total of 144 legislative districts. Petitioner's complaint here is limited to four of those districts.

STATEMENT OF THE CASE

After Louisiana Acts 106 and 108 of 1971, reapportioning the Louisiana State Legislature in light of the 1970 Census, were found unconstitutional, the District Court appointed a special master to draw a plan of reapportionment. The District Court, without conducting any hearing or receiving proposals

of other plans of reapportionment, entered a judgment adopting the special master's plan. The Court of Appeals vacated the judgment of the District Court and remanded the case to the District Court, ordering a hearing on the master's proposed plan in accordance with Federal Rules of Civil Procedure 53(e)(2). The District Court held a perfunctory hearing, rejecting all alternative plans or proposed modifications of the master's plan, and again adopted the master's plan as proposed. The Court of Appeals, after a full hearing and review of various proposed plans and proposed modifications modified the reapportionment plan with respect to Senate Districts 2, 3, 4 and 5, among others. Petitioners apparently make no complaint of the other changes effected by the Court of Appeals decision. For a more complete statement of the case, including a discussion of the racially gerrymandered effect of the District Court's decision, as well as population data indicating beyond question that the modified plan is not facially discriminatory, see respondents' brief to the Fifth Circuit, made part hereof as an Appendix.

REASONS FOR DENYING WRITS OF CERTIORARI

1. THE COURT OF APPEALS PROPERLY MODIFIED THE FOUR SENATE DISTRICTS IN QUESTION SO AS TO ELIMINATE CONSTITUTIONAL DEFECTS IN THE MASTER'S PLAN BY REMOVING THEREFROM RACIALLY GERRYMANDERED DISTRICTS.

The Court of Appeals properly modified the District Court's plan with respect to Districts 2, 3, 4 and 5 to conform the plan to the constitutional requirements as set forth by this Court. Under the plan of reapportionment adopted by the District Court, Senate Districts 2, 3, 4 and 5 were created by

artificial meandering lines that violated historical and traditional political subdivision boundaries and created "white districts" and "black districts". The plan resulted in impermissible racial gerrymandering. With total disregard for local subdivision boundaries, the District Court carved out racially segregated districts, creating a virtually solid black district and a virtually solid white district. See Appendix for black-white ratio statistics.

The boundaries of the City of New Orleans and the Parish of Orleans are co-existent and have been for nearly a century. In New Orleans (Orleans Parish) the ward has been the traditional historical boundary. Virtually since the founding of this old city, geographic electoral districts for public officials have always been either city wide, or where less extensive, based upon ward lines. The City ward has always occupied virtually the same status as the Parish (county) in other areas of the State. The ward in Orleans Parish is properly characterized as the historical boundary for established political subdivisions. The reapportionment plan for Senate Districts 2, 3, 4 and 5 as ordered by the District Court does unnecessary and unconstitutional violence to the established historical ward boundaries of the City of New Orleans.

In Bannister vs. Davis, 263 F. Supp. 202 (D.C. La. 1966), a three judge panel approved a reapportionment plan which was constructed almost entirely along ward boundary lines, with slight deviations to correct population imbalances. In the Bannister case, the Court pointed out that mathematical certainty is not a constitutional requirement, that each voting district need not have precisely the same number of individuals per elected representative,

and that the decisions of this Court stress the principle that reapportionment plans not only may but should follow the boundaries of existing wards and parishes. Indeed, an analysis of the Bannister case and the decisions of this Court, both before and after Bannister, on this point indicate clearly that the only justification for deviating from established political boundaries, such as the ward lines of Orleans Parish, is to achieve population balance within justified deviations. In Bannister, the Court said:

> "Mathematical exactitude is not a constitutional requirement. Each voting district need not have precisely the same number of individuals per elected representative..."
>
> * * *
>
> "...a reapportionment plan may and should follow the boundaries of existing wards and parishes as long as it represents the good faith attempt to keep the number of persons per representative as close as possible to the ideal..." 263 F. Supp. at 206.

The use of parish or ward lines must not submerge population as a controlling factor. However, it is clear that where in a given area, as in the instance of the area of New Orleans in question, where each of two plans which produce population counts well within the deviations accepted under the reapportionment decisions, that plan which follows established political boundaries must be favored and that which disregards them must be rejected. In modifying the plan adopted by the District Court, the Court of Appeals substituted a plan which maintained ward boundary integrity within

the permissible population deviations and rejected a plan which did violence to boundary integrity and which was no more desirable because the population deviations are substantially the same in each plan.

In the case of Abate vs. Mundt, 403 U.S. 182 (1971), this Court upheld a reapportionment plan for Rockland County, New York, even though the total deviation for population equality was 11.9 consent. The Court pointed out that mathematical precision is not a workable constitutional requirement, that deviations from population equality are justified if supported by a legitimate State consideration, and that a desire to preserve the integrity of political subdivisions justifies an apportionment plan which departs from numerical equality.

A comparison of the plan approved by the District Court with the plan as modified by the Court of Appeals demonstrates that the Court of Appeals' plan preserves the integrity of long established political subdivisions and historical political boundaries, while the District Court's plan does violence thereto. Furthermore, the plan as modified by the Court of Appeals includes logical, contiguous compact districts. The District Court's plan created "jigsaw" districts with as many as 24 sides. See Gomillion vs. Lightfoot, 364 U. S. 339 (1960). Had the Legislature attempted to impose upon the people of this State such "jigsaw" districts, there would have been justifiable criticism of "gerrymandering". The special master chose to disregard the concept of the integrity of political subdivisions, the maintenance of compactness and contiguity in legislative districts, and recognition of natural or historical boundary lines. The District Court adopted this approach:

"And I, [Trial Court] don't care what the boundaries are, because I don't know where the boundaries are; I don't have any idea where the boundaries are; and I don't propose to concern myself with it as long as the areas involved have representation from those areas..." (See Transcript of Comments of Court within the record dated Monday, August 2, 1971 on pages 7 and 8.)

* * *

"[a] Plan resulting from a computer determination if necessary in order to arrive at a plan most nearly consistent with the one man, one vote concept enunciated by the United States Supreme Court." (See District Court Order dated August 5, 1971)

By contrast to the District Court's plan, in the recent Mississippi reapportionment case of Connor vs. Johnson, 330 F. Supp. 506 (S.D. Miss 1971), a three-judge panel approved deviations of nearly ten percent, completely rejecting a suggesting that county lines should be crossed in order to achieve a more perfect numerical balance with the following observation:

"We, therefore, adhere to political lines as the best, fairest and most effective method of delineating districts for the election of State Legislators..." 330 F.Supp. at 518

The districts created by the District Court plan virtually insured black representation in some districts through purposefully

precluding that possibility in other districts. See Appendix for black-white ratio statistics. This creation of black districts and white districts by drawing zigzag lines is contrary to the principles set forth in Whitcomb vs. Chavis, 403 U. S. 124 (1971). In that case, residents of Marion and Lake Counties, Indiana, challenged State statutes establishing a multi-member district for the election of State Senators and Representatives. The challengers' primary contention was that the existence of the multi-member districts as created by the statute invideously diluted the vote of Negroes and poor persons living in the "ghetto area" of Marion County. This Court reaffirmed the principle that drafting a reapportionment plan in order to guarantee one racial group representation, whether white or black, is unconstitutional. Further, this Court pointed out that Federal Courts are not unlimited in their use of their judicial authority to broadly brush aside state apportionment policy without solid constitutional or equitable grounds for doing so. The portions of the opinion appearing at 91 S. Ct. 1871 et seq. are particularly appropriate to the instant case.

The District Court plan disregarded the mandate of this Court and of the United States Constitution that "districts should be drawn with an eye that is color blind". The Court of Appeals modified the District Court plan without regard to the color of the citizens living in the diverse areas of the City, while at the same time maintaining, wherever possible, historical ward boundaries and keeping within the permissible population deviances. As Justice Douglas pointed out in his dissenting opinion in Wright vs. Rockerfeller, 376 U. S. 62 (1964):

"When racial or religious lines are drawn by the State, the multiracial, multireligious communities that our Constitution seeks to weld together as one become separatist; antagonisms that relate to race or to religion rather than to political issues are generated; communities seek not the best representative but the best racial or religious partisan, since that system is at war with the democratic ideal, it should find no footing here."

2. THE ISSUES DECIDED BY THE COURT OF APPEALS IS MOOT SINCE ELECTIONS HAVE ALREADY BEEN CONDUCTED IN THE DISTRICTS AS CONSTRUCTED BY THE COURT OF APPEALS.

The election of State Senators under the plan adopted by the Court of Appeals was held on February 8, 1972, the primaries having been conducted earlier. This case is therefore moot.

The petitioners in this writ seek post-election relief in requesting the redrawing of Districts 2, 3, 4 and 5 and the ordering of new elections for these four Senate seats. There is no longer an actual controversy before this Court, because the election is over. Post election relief should be denied when the case is moot since there is no actual controversy to be decided by the Court and this Court does not render advisory opinions. Hall vs. Beals, 396 U. S. 45 (1969); Golden vs. Zwicker, 394 U. S. 103 (1969); Mills vs. Green, 159 U. S. 651 (1895); Fair vs. Dekle, 376 F. 2d 377 (5th Cir. 1966); Bynum vs. Burns, 379 F. 2d 229 (8th Cir. 1967); Munoz vs. Amador,

340 F. 2d 590 (5th Cir. 1965); Fair vs. Adams, 233 F. Supp. 310 (N.D. Fla. 1964).

3. THIS CASE PRESENTS NO ISSUE OF SPECIAL INTEREST JUSTIFYING A WRIT OF CERTIORARI.

The Louisiana Legislature is comprised of 144 legislative districts. The Court of Appeals approved the special master's plan as previously approved by the District Court with respect to 137 of those districts and modifying only 7. This petition for certiorari involves only 4 of those 7 districts. Thus, this case does not involve issues of the significance of a typical legislative reapportionment case, but rather only a small segment of the Louisiana Legislature.

This case is void of any special, important or compelling reasons for conducting a review on writ of certiorari. This case contains none of the generally recognized criteria usually considered by this Court in deciding whether writs should be granted.

The decision of the Court of Appeals does not conflict with the decision of another Court of Appeals on the same matter. The Court of Appeals has not decided an important state or territorial question in a way in conflict with applicable state or territorial law. The Court of Appeals has not decided an important question of Federal law which has not been settled by this Court. The Court of Appeals has not decided a Federal question in any way in conflict with applicable decisions of this Court. The Court of Appeals has not departed from the accepted and usual court of judicial proceedings.

C O N C L U S I O N

The Court of Appeals properly modified the plan of reapportionment for Senate Districts 2, 3, 4 and 5 as adopted by the District Court to carry out the principles of reapportionment as established by this Court. The Court of Appeals reapportioned Senate Districts 2, 3, 4 and 5 with a color blind eye that preserves the integrity of traditional and historical political subdivisions lines, maintains compact and contiguous legislative districts and is well within permissible population deviations, particularly when the minute deviations have such rational bases as those set forth above. Furthermore, since this case is now moot and presents no issues of special interest requiring review, Defendants-Respondents respectfully pray that the petition for certiorari be denied.

Respectfully submitted,

Jack P. F. Gremillion

JACK P. F. GREMILLION
Attorney General
State of Louisiana
State Capitol
Baton Rouge, Louisiana

Adrian G. Duplantier

ADRIAN G. DUPLANTIER
Attorney at Law
2714 Canal Street
New Orleans, Louisiana 70119

IGNATZ G. KIEFER
Attorney at Law
225 Baronne Street
New Orleans, Louisiana 70112

MICHAEL H. O'KEEFE
Attorney at Law
813 American Bank Building
New Orleans, Louisiana

C E R T I F I C A T E

Undersigned counsel hereby certifies that a copy of the foregoing brief has been forwarded to opposing counsel of record, this 14th day of April, 1972.

PENDIX

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
NO. -2968

APPEAL FROM U D STATES DISTRICT COURT
EASTERN DISTRIC. OF LOUISIANA, BATON ROUGE
DIVISION

VICTOR BUSSIE, ET AL VS. THE GOVERNOR OF SIANA, ET AL	CIVIL ACTION NO. 71-202
EMMITT J. DOUGLAS, ET AL VS. JOHN J. McKEITHEN, Individually and as Governor of Louisiana, et a.	CIVIL ACTION NO. 71-206
DOROTHY TAYLOR, ET AL VS. JOHN J. McKEITHEN, Governor of Louisiana, et al	CIVIL ACTION NO. 71-234
CARROLL G. MILLER, ET AL VS. GOVERNOR OF LOUISIANA, ET AL	CIVIL ACTION NO. 71-235
VICTOR BUSSIE, ET ALS VS. THE GOVERNOR OF LOUISIANA, ET ALS	CIVIL ACTION NO. 71-259

BRIEF ON BEHALF OF APPELLANTS WITH RESPECT TO SENATE PLAN NEW ORLEANS AREA

(Where used in this portion of the brief, District numbers refer to the numbers used in the plan ordered by the District Court)

The boundaries of the City of New Orleans and the Parish of Orleans are co-existant and have been for nearly a century. In New Orleans (Orleans Parish) the ward has been the traditional historical political boundary. Virtually since the establishment of this old city, districts for public officials have always been either City-wide or, where less extensive, based upon ward lines. The City ward has always occupied virtually the same status as a Parish (County) in other areas of the State.(1)

Assessment districts are divided by ward lines, as are City councilmanic districts. The legislative districts, both House and Senate, have always been so constructed. Thus, clearly, the ward in this parish is properly characterized as a historical boundary and an established political division.

The Orleans Parish Senate part of the reapportionment plan approved by this Court in Bannister vs. Davis, (263 F. Supp.202, 209 (D.C. La. 1966) was constructed entirely along ward lines; in the House plan there were very few exceptions to the ward boundary and these were designed to correct population imbalances.

With respect to Districts 6, 7 and 8,

the Senate plan for the New Orleans area approved by the District Court respects ward lines, with very slight deviations to achieve population balance. However, in Districts 2, 3, 4 and 5, ward lines are virtually ignored, with no apparent justification. For example, portions of Ward 7 are spread through all three districts. Further, according to the United States census figures, the Ninth Ward has 136,820 population, which is more than 40,000 people necessary to constitute an ideal single member senatorial district comprising 93,415 people. Under the Senate plan ordered by the District Court, the Ninth Ward has been completely divided with one section of the Ninth Ward forming a senatorial district with small portions of Wards 7 and 8 and another senatorial district with a small portion of Ward 8.

An alternate plan proposed to this Honorable Court by appellants achieves substantial population balance in accordance with the United States Supreme Court decisions governing the principles of "one-man - one vote" following historical ward lines. The alternate plan (2) is as follows:

District	Parish Description	Population	Numerical Deviation	Percent Deviation
2	Orleans Ward 9- Less Precincts 9 through 29	88,374	-5,041	-5.4
3	Orleans Ward 8 Ward 9 - Precincts 9 through 29	87,907	-5,508	-5.9
4	Orleans Wards 6 and 7	89,155	-4,260	-4.56
5	Orleans Wards 1,2,3 4 and 5	97,705	+4,290	+4.59
6	Same as U. S. District Court			
7	Same as U. S. District Court			
8	Same as U. S. District Court			

It should be noted that with respect to three districts, the above plan is identical to that of the United States District Court. With respect to Districts 4 and 5, the numerical division is substantially the same as in the District Court's Plan which criss-crossed wards. Moreover, as to these districts, the above proposed plan follows established ward lines which have served as the basis for legislative districts for over a century.(3)

With respect to the proposed Senatorial Districts 2 and 3, it should be noted that the composition of each single member senatorial district did not require the crossing of census tracts or voting precincts. Yet, proposed Districts 2 and 3 fully preserve the historical political subdivision of Ward 8 in its entirety and substantially those of Ward 9. The established boundaries of Wards 8 and 9 have existed in Louisiana law for many decades.(4) Of paramount importance, all precincts of Ward 9, which are a part of Senatorial District 3, are immediately adjacent and continguous with those of Ward 8 and Precincts 9 through 29 of Ward 9 are exactly within the census tract boundaries promulgated by the United States Bureau of Census. (5)

Proposed Districts 2 and 3 do have a somewhat higher numerical deviation than the plan proposed by the District Court. However, the testimony and documentary proof at the hearing before the District Court firmly establishes that the Ninth Ward of Orleans Parish is the fastest developing and growing area of the entire City of New Orleans. (6) The unofficial census returns show a total population for the Ninth Ward of 136,820 people. (7) Yet, it is beyond

dispute that new homes and apartment houses are being constructed throughout the area and within a very short period of time, the population of the Ninth Ward will easily exceed 200,000 residents. The United States Supreme Court in the recent case of Kirkpatrick vs. Preisler, 394 U.S. 526, 22 La. Ed. 2d 519, 89 S.Ct. 1225, (1968), ruled on this point as follows:

> "...Situations may arise where substantial population shifts over such a period can be predicted. Where these shifts can be predicted with a high degree of accuracy, States that are redistricting may properly consider them. By this we mean to open no avenue for subterfuge. Findings as to population trends must be thoroughly documented..."

Clearly, the fractional deviation over the population deviation established by the District Court is acceptable in light of the numerous United States Supreme Court decisions approving reapportionment plans with deviations far in excess of those proposed in Districts 2 and 3. In the Bannister case, the opinion of the three-judge Court consisting of Judge Wisdom, Christenberry and West includes the following language pertinent hereto:

> "...In line with a number of cases, we adopt as a permissible standard 15 per cent deviation from the ideal."
>
> * * * * * *
>
> "Where evidence shows that the population of a district has increased disproportionately in relation to

the rest of the state since the 1960 census, the legislature may permissibly err slightly to the side of overrepresentation to compensate for that district's additional growth..."

It is well established in the Federal jurisprudence on reapportionment that the integrity of political subdivisions or the recognition of natural or historical boundary lines within a State shall not be disturbed except where it is absolutely necessary to preserve the principle of "one-man - one-vote" representative districts. Consistently, the Courts have held that variations from a pure population standard are justified by such state policy considerations as [1] "the integrity of political subdivisions", [2] the maintenance of compactness in legislative districts or [3] the recognition of natural or historical boundary lines. (8) In the Bannister case the Court pointed out that mathematical exactitude is not a constitutional requirement, that each voting district need not have precisely the same number of individuals per elected representative, and that the United States Supreme Court decisions stress the principle that reapportionment plans not only may, but should follow the boundaries of existing wards and parishes. Indeed, an analysis of the Bannister case and the United States Supreme Court decisions both before and after it on this point indicate clearly that the only justification for deviating from established political boundaries, such as wards in New Orleans, is to achieve population balance within justified deviations.

It is respectfully submitted that the District Judge in the instant case ignored completely the following principles to which he subscribed in Bannister:

> "Mathematical exactitude is not a constitutional requirement. Each voting district need not have precisely the same number of individuals per elected representative..."
>
> * * * *
>
> "...A reapportionment plan may and should follow the boundaries of existing wards and parishes as long as it represents a good faith attempt to keep the number of persons per representative as close as possible to the ideal..."

Admittedly, the use of parish or ward lines must not submerge population as to the controlling factor. However, it is equally clear that where in a given area, as in this instance in the areas of New Orleans in question, each of two plans would produce population well within the deviations accepted in earlier decisions, that plan which follows established political boundaries must be accepted and that which disregards them must be rejected.

In the very recent case of Abate vs. Mundt, 401 U.S. ____, 91 S.Ct. 1904, 28 L. Ed 2d ____ (1971), the United States Supreme Court upheld a reapportionment plan for Rockland County, New York, even though the total deviation from population equality was 11.9%. The Court pointed out that mathematical precision is not a workable constitutional requirement, that deviations

from population equality are justified if supported by legitimate State considerations, and that a desire to preserve the integrity of political subdivisions justifies an apportionment plan which departs from numerical equality.

> "It is well established that electoral apportionment must be based on the general principle of population equality and that this principle applies to state and local elections, Avery v. Midland County, 390 U.S. 474, 481, 88 S. Ct. 1114, 1118, 20 L. Ed. 2d 45 (1968). 'Mathematical exactness or precisions is hardly a workable constitutional requirement', Reynolds vs. Sims, 377 U.S. 533, 577, 84 S.Ct. 1362, 1389, 1390, 12 L. Ed. 2d 506 (1964), but deviations from population equality must be justified by legitimate state considerations, Swann v. Adams 385 U.S. 440, 444, 87 S. Ct. 569, 572, 17 L.Ed. 2d 501 (1966). Because voting rights require highly sensitive safeguards, this Court has carefully scrutinized state interests offered to justify deviations from population equality.
>
> "In assessing the constitutionality of various apportionment plans, we have observed that viable local governments may need considerable flexibility in municipal arrangements if they are to meet changing

societal needs, Sailors vs. Kent Board of Education, 387 U.S. 105, 110-111, 87 S.Ct. 1549, 1553-1554, 18 L. Ed. 2d 650 (1967), and that a desire to preserve the integrity of political subdivisions may justify an apportionment plan which departs from numerical equality. Reynolds vs. Sims, 377 U.S. 533, 578, 84 S. Ct. 1362, 1390, 12 L. Ed. 2d 506 (1964)." Abate vs. Mundt, supra.

Even a cursory comparison of the plan approved by the District Court with that submitted by appellants will demonstrate beyond any question that appellants' plan preserves the integrity of long established political subdivisions and historical political boundaries, while the plan accepted by the District Court does violence thereto. Furthermore, the alternate plan of appellants includes logical, contiguous districts. The Master's plan creates "jigsaw" districts with as many as twenty-four sides. Had the legislature attempted to impose upon the people of this State districts so shaped, there would have been no end to the criticism which would have resulted, and the criticism would have been justified.

In the case at hand, the Master chose to ignore those long standing principles of Federal Constitutional law established by the United States Supreme Court. Apparently relying upon the following observations by the Trial Court, the Master totally disregarded the concept of the integrity of political subdivisions, the maintenance of compactness and contiguity in legislative

districts and the recognition of natural or historical boundary lines:

> "And I, [Trial Court] don't care what the boundaries are,because I don't know where they are; I don't have any idea where the boundaries are; and I don't propose to concern myself with it, as long as the areas involved have representation from those areas..." (See transcript of comments of Court within the record dated Monday, August 2, 1971 at pages 7 and 8)

* * * *

> "[A] plan resulting from a computer determination if necessary in order to arrive at a plan most nearly consistent with the one man, one vote concept innunciated by the United States Supreme Court." (Emphasis added. See District Court Order dated August 5, 1971)

By contrast to the District Court's plan, in the recent Mississippi reapportionment case of Connor vs. Johnson, 279 F. Supp. 699, a three-judge panel approved deviations of nearly 10%, completely rejecting a suggestion that county lines should be crossed in order to achieve a more perfect numerical balance with the following observation:

> "We, therefore, adhere to county lines as the best, fairest, and most effective method of delineating districts for the election of State legislators..."

ANALYSIS OF TESTIMONY AT DISTRICT COURT HEARING AND DISTRICT COURT'S OPINION

There are few, if any, disputed factual questions involved in this litigation. Thus, of necessity, a hearing concerning the Special Master's proposed plan would involve primarily submission of alternative plans and the establishment of relevant, virtually undisputed facts concerning the population and geography of the districts in question.

From these standpoints, the hearing in the District Court established all of the facts which were stated as such in appellants' prior brief to this Court, in appellants' objection and memorandum in support thereof filed at the hearing in the District Court, and in this brief.

Moreover, the hearing confirmed once again the District Judge's conviction, apparently reached when the Master's plan was first submitted to and approved by him before any party or interested person could even see it, that the Special Master's plan would be approved without any change whatsoever, no matter what may have been brought out at the hearing. With all due respect to the District Court, a fair and objective reading of the record leads to the inescapable conclusion that the hearing constituted in reality a defense by the District Judge of his Special Master's plan. See, for example, the following excerpts from the transcript:

THE COURT:

> This hearing, I want to tell you now will be expedited. So gentlemen, you may proceed in whatever

manner you wish to proceed in; it is immaterial to me who wants to be heard how, when or where. It's immaterial to me; just go ahead and get it in the record. So you may proceed, gentlemen, any way you wish. (TR.9)

THE COURT:

Oh, let me file one other thing in the record. This is a Western Union telegram from a Mr. Paul J. Hubbell, Jr., which says: "Consider my letter of August 14, 1971, to Mr. Ed Steimel and yourself as testimony in favor of single member districts." I would like this filed in the record of this case. (TR.10)

THE COURT:

It is not a question, gentlemen, of whether or not a better plan could be devised; that simply is not the law. We are concerned with whether or not the plan that this Court has approved is a proper plan and was properly approved; and so that is what we are considering in this hearing; and that, of course, is what will go to the Court of Appeals. (TR. 134)

THE COURT:

. . . I don't care to go into any other plans now. (TR. 135)

Significant facts brought out at the hearing include the following:

1. The total area included in appellants' proposed alternate Districts 2, 3, 4 and 5 is exactly the same as that in the Special Master's plan, so that the four alternate districts could be substituted for the Steimel districts without changing any other district whatsoever. (Tr. 31 and 32).

2. Each of the districts in appellants' plan includes a substantial black population; one, District 4, has a population which is approximately 60% Negro. (Tr. 36, et seq.)

3. Despite the heavy concentration of the Negro population in all of these districts, and particularly Wards 6 and 7, District 4, never was any attempt made, either in the course of the proceedings before the legislative and other committees appointed to draw reapportionment plans or in the legislature itself, to construct these districts along racial lines or, specifically, to include additional white population in District 4.

4. The state policy of including Wards 6 and 7 as a single-member Senate District has been established for over fifty years. Every proposal by every committee and by the legislature itself retained that district as such. (Tr. 40 and 97)

5. The effect of the Special Master's proposal is to create by artificial meandering lines "white districts" and "black districts", to the detriment of all citizens of this city. That portion of the Seventh Ward which is retained in the Special

Master's "white" District No. 5 includes practically all of the blacks remaining in this "white" district, approximately 20% of the total district. The effect of drawing racially segregated district lines will be to seriously impede a peaceful integration process taking effect in this area. (Tr. 92)

6. The Special Master's plan is virtually identical to one submitted prior to the 1966 reapportionment by the White Citizens Council, which was designed to create a virtually solid black district and a virtually solid white one, with a resultant dilution of the effectiveness of the Negro vote. (Tr. 93 and 94)

7. There is a definite trend towards an increase in black population and voter registration as compared to the white population and registration in the entire area included within the four disputed Senate Districts. (Tr. 95)

8. The Ninth Ward of the city of New Orleans is the fastest growing area of the city. (Tr. 101, et seq., and affidavits of various city officials)

9. While only two Negro legislators have been elected since Reconstruction, both of them have been from Orleans Parish, none from the rest of the state. Furthermore, two judges and a School Board member have recently been elected in New Orleans on a city-wide basis, without the necessity for the creation of "black districts" for judges or School Board members. (Tr. 108 and 109)

IN VIEW OF THE FOREGOING FACTS, IT IS ALMOST INCONCEIVABLE THAT ANYONE COULD CONCLUDE THAT THE DISTRICTS PROPOSED BY APPELLANTS ARE CONSTRUCTED IN ORDER TO ACCOMPLISH AN "INTENTIONAL DILUTION OF VOTES". (Tr. 56) As a matter of fact, appellants urge with the utmost sincerity, with the interest only in mind of the people of New Orleans, and based upon counsels' intimate knowledge of the people of this area which comprises over one-half of the city, that the effect of Mr. Steimel's plan, if allowed to stand, will be to polarize the white and black races to the serious detriment of the city. In a "Meet The Press" interview of the National Governors' Conference this past Sunday, one of the nation's most liberal governors condemned governmental action tending towards the creation of separate white and black districts for any purpose. In his words:- "If that ever happens on a large scale in this country, then Heaven help the United States of America".

After offering Mr. Steimel to the litigants as a witness, the Trial Judge remarked that if he were not called, "his plan and his explanation of the plan as filed in the record will simply speak for themselves". (Tr. 131) Appellants saw nothing to be gained other than the consumption of time by the examination of Mr. Steimel as a witness. As previously stated, there are no real disputes as to factual issues, and Mr. Steimel's motives are not an issue. If his "explanation of the plan" as it relates to the four Senate Districts in question is allowed to speak for itself, as suggested by the District Court, the record is indeed mute. Mr. Steimel's report

makes no explanation for his action in disregarding established ward lines, cutting across historical subdivisions, and producing districts which, by the District Judge's own admission, have a "many-sided perimeter". (District Judge's Opinion, Page 13)

On several occasions during the hearing and in his written opinion, the District Judge stresses that, in his opinion, the only question before him was whether the Steimel plan was "a proper plan". He repeatedly pointed out that he was not interested in whether a better plan could be devised. It is respectfully submitted that no reapportionment case to date adopts that view. The Court's duty is to adopt the best plan submitted to it, whether by the Special Master or anyone else, including second-class citizens such as incumbent legislators. For the Court to do otherwise is to impart to the Special Master's plan some special status. Obviously, this case does not involve a typical situation in which a matter is referred to a Master, involving complex factual issues. There are virtually no factual issues. When presented with an alternate plan such as appellants', which is well within the limits of the one-man, one-vote principle, but which much better meets every other standard enunciated by the Appellate Courts, it is respectfully submitted that the Court should substitute the alternate plan for that part of the Master's plan, rather than to take the view that the Master's plan is inviolate unless demonstrated to be unconstitutional.

As previously stated, the Master's

report gives no explanation for the creation of the four Senate Districts in question, deviating entirely from prior state policy, disregarding political subdivisions and historical boundaries, and creating "jig-saw" areas. In his written opinion, the District Judge appears to offer two explanations:-

1.

Steimel's plan pits incumbents against each other in each of two districts and creates two new districts without incumbents. For some reason, unkown to appellants and certainly unsupported by any decision to date, this seems to the District Court to be desirable. Obviously, the incumbents in these districts achieved that status by the election process in established political subdivisions, under a legislative reapportionment plan adopted by the Louisiana Legislature and approved by this Court in the Bannister case. The only plan which could place these incumbents thereafter in the same district would be one which deviates from the established state policy and from historical political boundaries. If this were necessary in order to comply with the one-man, one-vote principle, appellants would certainly make no objection. It should be noted that the 1966 reapportionment plan placed three then incumbents in a two-member district, and that the present proposed plan reduces the Orleans representation in the Senate from eight to seven, with the accompanying loss of one incumbent. Since these changes were necessary to follow the one-man, one-vote principle, appellants joined in making them, rather than objecting thereto. However, population considerations

do not require the destruction of established political boundaries in this instance. Certainly, their destruction is not warranted simply to accomplish the elimination of one or more incumbents. Every prior reapportionment decision would condemn that result.

11.

The Trial Court concedes that the proposed changes suggested by appellants in the four Senate Districts "would result in districts contained within established ward lines whereas the Court-approved plan cuts across ward lines in some instances". (Opinion Pages 9 and 10) The District Court further conceded that the alternate plan "probably would meet the one-man, one-vote standard, even though the deviations would be slightly higher than under the Court-approved plan". (Opinion, Page 11) The only other explanation offered by the Court to justify the deviation from established reapportionment principles inherent in the Steimel plan involves racial considerations. The judge concludes erroneously that it is the adherence to established ward boundaries which has been the reason why only two Negro legislators have been elected in Louisiana. With all due respect, this is simply not a correct conclusion. As a matter of fact, as has been pointed out already, both of these legislators have come from New Orleans, and several important city-wide positions, including two District Judgeships and a School Board position, are presently filled by Negroes who have been elected city-wide, not from artificially constructed "black districts".

The basic fallacy in the District

Court's conclusions as to these four districts is the essentially racist premise that white voters vote only for white candidates and black voters for blacks. As indicated above, the facts do not support this premise. The fact is that a Negro candidate has a fair opportunity to be elected now in any of appellants' four proposed districts. Furthermore, the record demonstrates that all the districts proposed by appellants will experience a significant increase in black population in the future. Negroes are spread throughout the four districts proposed by appellants, not because of the way these districts are drawn but because, unlike many other cities, the Negro population is spread throughout every political subdivision of the city, and housing in this city is, to a large extent, racially integrated. These are desirable situations, to be encouraged. Application of the District Court's theory would, it is submitted, cause a serious regression in racial relations in this City. As a result of the very substantial Negro population in each of appellants' proposed four districts, the Negro voice in government is enhanced, not diluted, as it would be under the Steimel plan.

The District Court, in its opinion, seems to stress that appellants did not question Mr. Steimel "as to the rationale behind the Court-approved plan". Obviously the only rationale, as disclosed by the judge's opinion, was to segregate white and black voters, a rationale condemned by the United States Supreme Court and by the long-established policy of this nation. Finally, the Court discussed at some length the advantages of single-member districts, since appellants also propose single-member

districts, this is no issue as to these four Senate Districts.

POPULATION IS THE CONTROLLING FACTOR; VOTER REGISTRATION IS IMMATERIAL

The District Court, in the instant case, considered voter registration figures admitted into evidence over objection, contained within an article appearing in the New Orleans States-Item on August 25, 1971. The reasons for judgment submitted by the District Court in support of its order are thus based upon unverified information appearing in the said article. It is respectfully submitted that there is no competent evidence whatsoever within the record that substantiates the voter registration composition of the Senatorial plan for New Orleans ordered by the District Court. Indeed, voter registration is completely unrelated to the issue at hand.

All reapportionment cases decided by the Federal Courts have consistently held that the population figures compiled by the United States Bureau of Census are controlling and that voter registration figures should not be considered. In the hallmark Bannister case, the Court rules as follows:

> "Apportionment in Louisiana should not be based on the number of registered voters or the number of votes cast . . . Administration convenience in Louisiana's traditional use of total population for apportioning the House. . strongly suggest that the legislature employed total populatation as the basis for reapportionment of both the House and Senate." Bannister vs. Davis, supra at page 208.

See also Kirkpatrick vs. Preisler, 394 U.S. 526, 534-535; 22 La. Ed. 2d 519, 527.

A reapportionment plan for the City of Baltimore, which was based on voter registration figures, was invalidated by a three-judge panel in the case of Ellis vs. Mayor and City Council of Baltimore, 234 F. Supp. 945 (1964). The Court in reviewing the United States Supreme Court decision of Reynolds vs. Sims, 377 U. S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964) observed as follows concerning the use of voter registration figures:

> ". . . defendants contend that the concept for 'one person, one vote' implicitly means that the validity of apportionment is related to voters and not constituents. Reference is made to isolated phrases throughout Reynolds vs. Sims, supra, and companion cases, where the Supreme Court discussed statistics relating to registered voters and referred to 'voters' sometimes even interchangably with 'population' as lending support to the asserted construction of 'one person one vote'. Nevertheless, a careful reading of Reynolds vs. Sims, and particularly its analysis of the foundation for the 'one person, one vote' concept, makes clear that the basic constitutional protection is one of equal representation by population and not equal representation by registered voters."
> (Emphasis added)

WHITCOMB VS. CHAVIS INVALIDATES DISTRICT COURT'S PLAN

The reasoning of the District Court in attempting to justify the destruction of established ward boundaries on the basis of racial considerations is in obvious conflict with the controlling case of Whitcomb vs. Chavis, 401 U. S. _____, 91 S. Ct. 1858, 28 L. Ed. 2d (1971) decided by the United States Supreme Court on June 7, 1971. The facts in the Chavis case are very similar to those involved in the instant litigation. In Chavis, suit was filed in the District Court by residents of Marion and Lake Counties, Indiana challenging state statutes establishing a multi-member district for the election of Senators and Representatives. The primary contention was that the existing statute invidiously diluted the votes of negroes and poor persons living in the "Ghetto area" of Marion County. A three-judge Court was empanelled and after extensive hearings the Court invalidated the Indiana statutes on the basis that they operated to minimize and cancel out the voting strength of a black minority group inhabiting a ghetto area in Indianapolis.

The three-judge Court proceeded to establish a single member district within the Township of Indianapolis, comprising 28 contiguous census tracts and parts of four others. The Court ordered a single member district consisting of 97,000 negroes and 35,000 whites. As in the instant case, the District Court in Chavis states that county lines had been crossed specifically to create a single member district wherein blacks would be elected to

the legislature to give "recognition to the cognizable racial minority group whose grievance led (sic) to this litigation". Chavis vs. Whitcomb, 307 F. Supp. 1362, 1365-66 (1969).

The United States Supreme Court reviewed the District Court's determination in Chavis and firmly ruled that this type of approach, drafting a reapportionment plan in order to guarantee one racial group representation was completely invalid. Further, the Court observed that the District Court admittedly was sitting as an "equity court, but they were not unlimited in using their judicial authority by broadly brushing aside State apportionment policy without solid constitutional or equitable grounds for doing so".

> "Rather than squarely finding unacceptable discrimination against outstate voters in favor of Marion County voters, the trial court struck down Marion County's multi-member district because it found the scheme worked invidiously against a specific segment of the county's voters as compared

with others. The court identified an area of the city as a ghetto, found it predominatly inhabited by poor negroes with distinctive substantive law interest and thought this group unconstitutionally underrepresented because the proportion of legislators with residences in the ghetto elected from 1960 to 1968 was less than the ghetto's proportion of the population, less than the proportion of legislators elected from Washington Township, less populous district, and less than the ghetto would likely have elected had the county consisted of single-member districts. We find major deficiencies in this approach."

* * * * * * *

". . . The mere fact that one interest group of another concerned with the outcome of Marion County elections have found themselves outvoted and without legislative seats of its own provides no basis for involving constitutional remedies where, as here, there is no indication that this segment of the population is being denied access to the political system.

* * * * * * *

"The District Court's holding, although on the facts of this case limited to guaranteeing one racial group representation, is not easily contained. It is expressive of the more general proposition that any group with distinctive interest must be represented in legislative halls if it is numerous enough to command at least one seat and represents a majority living in an area sufficiently compact to constitute a single-member district. This approach would make it difficult to reject claims of Democrats, Republicans, or members of any political organization in Marion County, who live in what would be safe districts in a single member district system but who in one year or another, or year after year, are submerged in a one-sided multi-member district vote. There are also union oriented workers, the university community, religious or ethnic groups occupying identifiable areas of our heterogeneous cities and urban areas . . ."

* * * *

It is respectfully submitted that the District Court in the instant case disregarded the mandate of the United States Supreme Court in Chavis ". . . districts should be drawn with an eye that is color blind", Ibid, p. 1866.

The plan approved by the District Court completely destroys ward boundaries in a manner similar to that which the District Court attempted in the Chavis case. The proposed Senate plan for the City of New Orleans

does not violate the ward boundaries and does not in any manner "operate to minimize or cancel out the voting strength of the black population". Whitcomb vs. Chavis, 91 S. Ct. 1858, 1868-69 and cases cited therein. This is clearly illustrated by the following breakdown of the percentages of the black and white residents of the proposed new districts (See Tr. 74 et seq):

DISTRICT NUMBER	APPROXIMATE POPULATION WHITE	BLACK
2	52 %	48 %
3	56 %	44 %
4	40 %	60 %
5	62 %	38 %

(District 6 in the District Court plan also has a majority black population).

The District Court, while conceding that the proposed Senate Plan for the City of New Orleans is constitutional in that it meets the one man one vote standard without crossing ward boundaries, concludes that it operates to diversity the negro voting population throughout the districts and thus significantly dilutes their vote. (See reasons for Judgment, page 11). It is submitted that it cannot be seriously contended that the proposed new senatorial districts dilute the voting strength of Negroes in view of the foregoing percentages of Negro residents in each of the five proposed districts.

The City of New Orleans stands out as a model to the rest of the nation on race relations. There have been no riots or frictions between the black and white residents of the City of New Orleans as has occurred in numerous parts of the country. The plan approved for the senatorial districts in the City of New Orleans achieved nothing more than the

complete polarization of whites in their respective districts and blacks into theirs in complete violation of the United States Supreme Court mandate in the Chavis case.

Justice Douglas in his dissenting opinion in the case of Wright vs. Rockerfeller, 376 U. S. 62, 84 S. Ct. 603 (1964) recognized the racial and political danger to a community created by a proposal such as the Steimel plan:

> "Racial electoral registers, like religious ones, have no place in a society that honors the Lincoln tradition - "of the people, by the people, for the people." Here the individual is important, not his race, his creed, or his color. The principle of equality is at war with the notion that District A must be represented by a Negro, as it is with the notion that District B must be represented by a Caucasian, District C by a Jew, District D by a Catholic, and so on. Cf. Gray vs. Sanders, 372 U. S. 368, 379, 83 S. Ct. 801, 807-808, 9 L. Ed 2d 821. The racial electoral register system weights votes along one racial line more heavily than it does other votes. That system, by whatever name it is called, is a divisive force in a community, emphasizing differences between candidates and voters that are irrelevant in the constitutional sense. Of course race, like religion, plays an important role in the choices which individual voters make from among various candidates. But government has no business designing electoral districts along racial or

religious lines..."

* * * *

". . When racial or religious lines are drawn by the State, the multi-racial,multireligious communities that our Constitution seeks to weld together as one become separatist; antagonisms that relate to race or to religion rather than to political issues are generated; communities seek not the best representative but the best racial or religious partisan. Since that system is at war with the democratic ideal, it should find no footing here.

"Separate but equal" and "separate but better off" have no more place in voting districts than they have in schools, parks, railroad terminals, or any other facility serving the public."

* * * *

The reasoning of Justice Douglas is applicable to the instant case. To allow the District Court plan for the Senatorial District of New Orleans to stand would, as Justice Douglas warned, cause the black and white community to become separatists to pit one race against the other. Antagonisms would in fact grow as a result of the proposed District Court plan, and the good will and cooperation which has existed in the New Orleans community for many years would be seriously affected.

CONCLUSION

The meandering lines of the District Court - Special Master Plan crossing repeatedly political subdivision lines long established in this State's Constitution, indicates that the author of the plan obviously misunderstood the Equal Protection Clause of the United States Constitution. The Legislature and the people through their constitution are the policy makers in our democratic system, and a Court errs by intruding upon or disregarding state policy any more than is necessary in correcting inequities. The District Court - Special Master Plan seriously and unnecessarily disregarded long established apportionment policies for this State. The requirements of the Fourteenth Amendment could be simply and more equitably satisfied by more closely adhering to established political subdivision boundaries and state policy.

Appellants' proposed Senate Plan for Orleans Parish satisfies these objectives. It should be noted that the changes proposed by appellants in the New Orleans Senate Plan can be made without having any effect whatsoever upon the rest of the Senate plan approved by the District Court.

Respectfully submitted,

s/I. G. Kiefer
IGNATZ G. KIEFER
Attorney at Law
225 Baronne Street
New Orleans, Louisiana
70112

s/Thomas W. McFerrin
THOMAS W. McFERRIN
Assistant Attorney General
State of Louisiana
State Capitol
Baton Rouge, Louisiana

s/Michael H. O'Keefe
MICHAEL H. O'KEEFE
Attorney at Law
813 American Bank Bldg.
New Orleans, Louisiana

s/Adrian G. Duplantier
ADRIAN G. DUPLANTIER
Attorney at Law
2714 Canal Street
New Orleans, Louisiana
70119

CERTIFICATE

Undersigned counsel hereby certifies that a copy of the foregoing brief has been hand delivered to opposing counsel of record, this 14th day of September, 1971.

s/I. G. Kiefer

FOOTNOTES

(1) The following examples are pertinent:

(a) In each parish except Orleans, one assessor is elected from the Parish. In Orleans Parish, an assessor is elected from each of the seven municipal districts. These districts are based on ward boundaries. La. Const. Art. XIV §§ 9 and 20.

(b) Until recently, U. S. Congressional Districts were apportioned on a ward basis in Orleans Parish and on a parish basis for all other parishes. (See Act 160 of 1912 and Act 355 of 1966) Basically, this pattern is still followed. (See La. R. S. 18:1431.)

(c) The membership of the State Central Committee of each of the various political parties is determined on a parish basis for all parishes except Orleans. In Orleans Parish, membership is twenty members from the representative districts therein. The representative districts generally follow ward boundaries. See La. R.S. 18:355 (1).

(d) Traditionally, Legislative Districts have been constructed on a ward basis in Orleans Parish and on a parish basis in other parishes. See R. S. 24:35 and 35.1; Bannister vs. Davis 263 F. Supp 202 (1966) upholding the constitutionality of Acts 3 and 4 of the 1966 Extra Session of the Legislature; Act 2 of the 1st Extra Session of 1963; Act 297 of 1960; Act 505 of 1954; La. Const. Act III, §2, 3, 4 and 5 and constitutional provisions cited in footnote 5.

(2) Thus, the contrast between the Special Master approved plan and the one which basically follows ward lines is graphically illustrated in the exhibits attached hereto. Particularly with respect to Districts 2, 3, 4 and 5, the Master plan follows a much meandering line. The boundaries of the proposed plan by defendants herein described are almost entirely straight lines. For example, the Master's proposed District 4 is a figure having 21 sides. Proposed District 5 has 24 sides. None of the defendants proposed districts exceed six (6) sides.

(3) See La. Const. of 1921, Art. III, §4; La. Const. of 1913, Arts. 19 and 20; La. Const. of 1898 Art. 20; La. Const. of 1879 Art. 18.

(4) See Footnote 1(d) and 3.

(5) See Exhibit #1 (Map and supporting documents)

(6) See affidavit of Harold Cook, Executive Vice-President of New Orleans East, Inc. with supporting documents. (Exhibit #2)

(b) See affidavit of Frank E. Robin, Department of Permits and Safety, Chief Building Inspector, City of New Orleans. (Exhibit #3)

(c) See Affidavit of Councilman Philip C. Ciaccio. (Exhibit #4)

(d) See affidavit of Louis E. Nicklaus, Chief Deputy Registrar of Voters for the Parish of Orleans, with supporting documents. (Exhibit #5) Significantly, it should be noted that from March 31, 1970,

the concluding date of the 1970 census, through August 3, 1971, the number of registered voters increased from 44,380 to 46,143 or a total increase of 1,763, or approximately 4%. While an increase in voter registration does not of itself prove a comparable population increase, it is certainly a strong indication thereof. Correspondingly, a 4% increase in population since the United States Census figures were compiled would place these districts well within even the District Court's noun.

(7) See Footnote 5.

(8) Swann vs. Adams, 385 U. S. 440.

Reynolds vs. Sims, 377 U. S. 533.

Roman vs. Sincock, 377 U. S. 695.